

PRIVILEGED AND CONFIDENTIAL – DELIBERATIVE PROCESS

MADISON-KIPP CORPORATION (MKC) PCB CONTAMINATION SITE BRIEFING

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BACKGROUND

- MKC is an aluminum die caster located in a residential neighborhood in Madison, Wisconsin.
- Historical PCB releases onsite and offsite present from die casting equipment hydraulic fluids.
- WDNR is working with the facility to cleanup other COCs at the facility including organic solvents (PCE) and manage a contaminated groundwater plume beneath the facility.
- In 2013, WDNR requested help from EPA because MKC was refusing to address PCB contamination at the site, claiming lack of jurisdiction due to “pre-78” releases of PCBs. EPA does believe MKC has met its burden showing releases were pre-78, and in fact has discovered evidence that may have continued well into the 1980s.
- TSCA enforcement staff inspected the Site under TSCA — which resulted in MKC proceeding with a PCB investigation and remediation of PCB contamination within, outside, and beneath the building. (Indoor wipe/bulk testing and air testing; adjacent residential properties).
- High concentrations are beneath building (up to 20,000 ppm) and are currently inaccessible due to ongoing manufacturing operations.
- EPA was coordinating working with WDNR and MKC the company in an attempt to ensure PCB remediation at the Site the state settlement met all applicable state and federal requirements under TSCA (e.g. groundwater monitoring, establishing criteria for PCB remediation beneath the plant and triggering events, financial assurance, O&M), however that coordination ended in 2017.
- In June of 2017, EPA was notified by WDNR that MKC and WDNR had ceased coordinating with EPA and that MKC joint negotiations would be negotiating an independent settlement with WDNR to resolve any remaining contamination issues at the Site. On November 27, 2017, the WDNR settled its enforcement case with MKC.
- EPA was not a party, nor privy, to these negotiations and was not provided a copy of the settlement until after it was filed in state court. Now that the settlement is final, EPA intends to proceed to address any remaining federal requirements under TSCA at the Site not addresses under the state settlement, required to wait for completion of the WDNR settlement before continuing discussions with Kipp on meeting TSCA requirements.
- On November 27, 2017, the WDNR settled its enforcement case with MKC.

Background on EPA R5 & WDNR MOA

- EPA and WDNR entered into a Once Cleanup Program MOA in 2006.
- MOA recognizes that standards and processes under NR 140 and 720 of Wisconsin Administrative Code will result in cleanups that meet the objectives of TSCA Section 6(e) for sites subject to the MOA.
- For sites of limited complexity, the MOA provides a process for an expedited coordinated review and approval under TSCA.
- For complex sites, the responsible party may still apply to EPA for a TSCA Coordinated Approval under 40 CFR §761.77, but the application will not be subject to the expedited review process established in this MOA.
- A responsible party also has the option to request EPA TSCA approvals independent of the MOA under the self-implementing or risk-based disposal regulations at §§761.61(a) and (c).

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- For PCB remedial sites proceeding under a TSCA Coordinated Approval process with WDNR, LCD RRB typically coordinates with WDNR Project Manager prior to WDNR's issuance of state remedial approval. This is done to ensure EPA is comfortable with the proposed PCB remedy developed by the WDNR under EPA's recognition of the state regulations. This approach expedites EPA's TSCA Coordinated Approval of the WDNR enforceable decision document.
- EPA retains the ability to add conditions to the federal TSCA approval beyond those that the State approval has required.
- RRB has not to this point issued a TSCA Coordinated Approval or a Risk-Based Approval to a party that has reached a settlement with the State of Wisconsin.

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NEXT STEPS

- EPA staff reviewed the settlement and are having a technical call with Madison-Kipp on 2-21-18.
- EPA has taken the position that a TSCA Approval is required to address the remaining federal PCB remediation issues at the Site that were not resolved under the state settlement. While EPA does not intend to defer to the state settlement, EPA will inform MKC that we are prepared to review a TSCA Coordinated Approval using the settlement agreement as a basis for the TSCA approval.
- EPA will outline desired approach to the remaining technical compliance concerns in order resolve site the PCB contamination ~~remedial aspects under the Federal TSCA program.~~